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IN THE

SUPREME COURT OF THE UNITED STATES

No. 1411

JEANNE S. WEED and SALLY ANNE DELUCCIA,
Petitioners,

vs.

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
Respondent.

CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI.

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IN THE

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No. .

JEANNE S. WEED and SALLY ANNE DeLUCCIA,
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EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
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To: The Honorable, the Supreme Court of the United States:

The petition of Jeanne S. Weed and Sally Anne DeLuccia, respectfully prays for a writ of certiorari to the United States Court of Appeal, for the Fifth Circuit, to review the decision of said Court rendered the 27th day of March, 1961.

OFFICIAL REPORT OF THE OPINION AND JUDGMENT BY THE COURT BELOW.

1. (a) The opinion and judgment which petitioners seek to have reviewed, is that in the case of Jeanne S. Weed and Sally Anne DeLuccia, appellants, versus Equitable Life Assurance Society of the United States, appellee, F.2d .

STATEMENT OF THE GROUNDS OF JURISDICTION.

(b) This Court has jurisdiction to review said opinion and judgment under Section 346 of the Judicial Code, Sec. 1254 (1) of Revised Title 28, U.S.C.A.

(i) The date of the opinion and judgment of the Circuit Court of Appeal, Fifth Circuit, sought to be reviewed, is March 27, 1961, and was entered the same day.

(ii) This Court has jurisdiction to review said opinion and judgment under Section 346 of the Judicial Code, Section 1254 (1) of Revised Title 28, U.S.C.A.

(c) The question which is presented for the Supreme Court's consideration is:

> WHERE A MAN MAKES HIS WIFE BENEFICIARY OF INSURANCE AND THEREAFTER BECOMES MENTALLY DISABLED FOR THE REST OF HIS LIFE, AND DURING SUCH PERIOD OF DISABILITY HIS WIFE FRAUDULENTLY DIVESTS HIM OF ALL OF HIS PROPERTY, BOTH REAL AND PERSONAL, AND THERE IS EXTENSIVE LITIGATION BY THE GUARDIAN OF SUCH INCOMPETENT HUSBAND, IN WHICH HIS PROPERTY IS SUCCESSFULLY RETRIEVED FROM HIS WIFE AND SHE THEN DIVORCES HIM UPON

THE GROUND OF INSANITY AND HE THEN DIES AND THE PROBATE OF HIS WILL LEAVING EVERYTHING TO HER IS REVOKED AT THE TRIAL BEFORE THE PROBATE COURT FOR THE REASON THAT THE DECEDENT TESTATOR (INSURED) DID NOT POSSESS MENTAL CAPACITY TO MAKE A WILL, AND THE SAID PURPORTED WILL HAVING BEEN EXECUTED A FEW DAYS FROM THE PURPORTED EXECUTION OF DESIGNATION OF THE BENEFICIARY; AND SUCH INSURED LEAVES NATURAL CHILDREN, ARE THE NATURAL CHILDREN NOT ENTITLED TO THE PROCEEDS OF SAID POLICIES INSTEAD OF THE DIVORCED WIFE?

(d) The statute involved is Chapter 222.13 Florida Statutes 1941, which reads as follows, the pertinent part is emphasized:

> "Whenever any person shall die in this state leaving insurance on his life, *the said insurance shall inure exclusively to the benefit of the surviving child or children and husband and wife of such person in equal portions*, or to any person for whose use and benefit such insurance is declared in the policy."

STATEMENT OF THE CASE.

(e) The case has arisen on the following facts:

In December of 1947 and February of 1948, George E. Stevens purchased three certain insurance policies from the defendant and had the beneficiary thereof designated as Louella H. Stevens (although she is better known as Jane Hooks Stevens and is so referred to in many instances).

That at the time of the issuance of said policies, George E. Stevens was a practicing medical doctor in the City of

Leesburg, Florida. Shortly thereafter the mental and physical health of the said Stevens began to fail and his ability to hold forth in the practice of medicine became impaired with result that he was compelled to abandon his practice and closed his personally owned clinic and hospital in Leesburg, Florida. Thereafter, on November 22, 1952, a purported application for change of beneficiary was made to the defendant herein so that the three policies of insurance hereinabove described, would be re-issued, vesting all rights in the insured (George E. Stevens) and his wife, Louella H. Stevens (Jane Hooks Stevens) jointly. Jane Hooks Stevens testified under oath in a subsequent lawsuit, The First National Bank of Leesburg, as guardian, versus Jane Hooks Stevens, that she induced him to sign the applications for change (although there is evidence that he never signed them at all, and that the signatures thereon are forgeries, see pages 12-13 of the Transcript of Record hereinafter referred to as Tr.).

Thereafter the policies were re-issued and the beneficiary clause in each of them read:

> "The insured's wife, Louella H. Stevens, if living at the death of the insured, if not then living, in equal shares to the insured's daughters, Colvin Georgeanne Stevens and Diana Jane Stevens, if then living, or to the survivor of them."

It is alleged that George E. Stevens did not sign the application for change of beneficiary, and in any event, he was mentally incompetent in October and November, 1952, and legally incapable of executing any legal document that would at that time or at any time prior to his death, that would have any legal force or effect.

Subsequently, Louella H. Stevens, also known as Jane Hooks Stevens, obtained a final decree of divorce from the

insured, in the State of Nevada, on the 9th day of July, 1954, some ten months prior to the death of George E. Stevens, on May 1, 1955. In the meantime George H. Stevens had made no further attempt to change the designation of beneficiary on his policies.

The record shows that from September 26, 1952, on which date George E. Stevens was adjudicated mentally incompetent by the County Judge of Orange County, Florida, pursuant to a petition sworn to by Jane Hooks Stevens, on until the end of his life, Jane Hooks Stevens, the purported beneficiary of these policies of insurance embarked upon and pursued a course of treatment directed towards this unfortunate, sick man, that is almost without parallel for diabolical cunning and wickedness. Among other things she did was to obtain a power of attorney purported to be signed by him on the same day that she had him adjudged mentally incompetent, and on the same day executed a deed, as attorney in fact under said purported power of attorney, conveying the hospital, clinic and home of this unfortunate man to a Colvin Wilhite of Atlanta, Georgia, an uncle of the said Jane Hooks Stevens (Tr. 15).

Thereafter, The First National Bank of Leesburg was appointed guardian for Stevens and instituted an action in the State court to recover the property that she had fraudulently divested him of. This suit was successful and the net effect was to sustain the proposition that the said George E. Stevens was mentally incompetent, and by reason thereof, Jane Hooks Stevens had fraudulently divested him of the title to his property, which was restored by this action, either in kind or in negotiable equity, except that she was allowed to retain the home place in order to have a place to rear their two minor children (Tr. 18).

After the conclusion of this litigation, Jane Hooks Stevens went to the State of Nevada, and in due course instituted action for and obtained a final decree of divorce. The ground for divorce and the finding of the Court was the insanity of George Ernest Stevens (Tr. 18-19).

Thereafter, George E. Stevens departed this life in a nursing home in California, on May 1, 1955 (Tr. 19).

Jane Hooks Stevens then produced an alleged will signed by George E. Stevens on September 16, 1952, and offered the same for probate in the County Judge's Court of Lake County, Florida. The plaintiffs in this case, being the children of the decedent by his first marriage, filed a petition for revocation of said will on the ground that George E. Stevens did not possess testamentary capacity on September 16, 1952, being the date of the will. Extensive testimony was taken before Judge Hall, from three practicing licensed psychiatrists, each of whom had treated Dr. Stevens, to-wit: Dr. Samuel Hibbs of Tampa, Florida, Dr. Roger E. Phillips, of Orlando, Florida, and Dr. Mark Griffin of Asheville, North Carolina. Each of these doctors testified unequivocably that George E. Stevens did not possess testamentary capacity on September 16, 1952. No testimony to the contrary was offered by Jane Hooks Stevens. At the conclusion of the hearing, County Judge Hall announced his ruling that from the evidence he was compelled to find that George E. Stevens did not possess testamentary capacity on September 16, 1952, and subsequently a complete order was entered by the court, finding among other things, "that the will was invalid because the decedent did not possess testamentary capacity at the time of the attempted execution of said will". (Tr. 19-20). This, therefore, establishes the fact that George E. Stevens did not have the mental capacity to execute the request for a change of beneficiary on November 22,

1952, in the instant case, which was a matter of 67 days after he signed the will, which was held invalid by reason of lack of testamentary capacity (Tr. 20).

Thereafter, Jane Hooks Stevens applied to the defendant for payment of the policies involved herein, which were paid to her. The petitioners in this case contend that they are entitled to the proceeds of said policies and are suing the respondent therefor.

(g) The basis for removal from the state court to the Federal court in the first instance was diversity of citizenship, Title 28, U.S.C.A., Sec. 1332 (a) (1).

ARGUMENT.

(h) It is recognized that the amended complaint in this cause probably does not conform to the principles of good form in pleading; but counsel respectfully asks this Court to read the original complaint herein, contained on pages 1, 2 and 3 of the record, which we believed to be a good complaint and should have withstood an attack as to the form and substance thereof. Nevertheless the District Court granted the motion to dismiss the same, appearing on pages 5 and 6 of the Transcript of Record, and it was felt that inasmuch as the actions of the divorced wife of the decedent (who had been designated beneficiary of the policies prior to the divorce) had been so heinous and so contrary to what has been considered by all civilizations to be proper conduct for a wife and mother, that if documentary evidence of this conduct were attached to the amended complaint and set forth in more or less detail, the point that we are trying to make in this case would be driven home to the courts, *i.e.*, that where relations between divorced persons are such that the court cannot assume that the husband intended for the divorced

wife to have the proceeds of his insurance policies, then as a matter of law, the proceeds should descend and be distributed by operation of law rather than under the designation of beneficiary; and upon the further grounds that when the last designation of beneficiary was alleged to have been signed by George E. Stevens, that he was absolutely, mentally incompetent, and that such designation of beneficiary had no force or effect whatsoever.

Inasmuch as this case is somewhat involved and inasmuch as whichever way this court rules in the matter, it will be establishing a new precedent in the United States, it is respectfully suggested that the allegations of the original complaint and the allegations of the amended complaint, appearing on the first twenty-four pages of the Record, should be examined with greater than ordinary care.

The District and Circuit Court of Appeals erred in holding, in effect:

> "WHERE A MAN MAKES HIS WIFE BENEFICIARY OF INSURANCE WHILE MENTALLY DISABLED WHICH CONDITION PERSISTS FOR THE REST OF HIS LIFE, AND DURING SUCH PERIOD OF DISABILITY HIS WIFE FRAUDULENTLY DIVESTS HIM OF ALL OF HIS PROPERTY, BOTH REAL AND PERSONAL, AND THERE IS EXTENSIVE LITIGATION BY THE GUARDIAN OF SUCH INCOMPETENT HUSBAND, IN WHICH HIS PROPERTY IS SUCCESSFULLY RETRIEVED FROM HIS WIFE AND SHE THEN DIVORCES HIM UPON THE GROUND OF INSANITY AND HE THEN DIES AND THE PROBATE OF HIS WILL LEAVING EVERYTHING TO HER IS REVOKED AT THE TRIAL BEFORE THE PROBATE COURT FOR THE REASON THAT THE DECEDENT TESTATOR (INSURED) DID NOT POSSESS MENTAL CAPACITY TO MAKE A WILL, AND THE SAID PURPORTED WILL HAV-

ING BEEN EXECUTED A FEW DAYS FROM THE PURPORTED EXECUTION OF DESIGNATION OF THE BENEFICIARY; NEVERTHELESS, NOTWITHSTANDING THESE FACTS AND NOTWITHSTANDING THE MENTAL INCOMPETENCE OF THE INSURED TO DETERMINE THAT HE STILL WANTED HIS EX-WIFE TO HAVE THE PROCEEDS OF HIS LIFE INSURANCE—THAT THE EX-WIFE WAS ENTITLED TO THE PROCEEDS OF INSURANCE POLICIES TAKEN OUT YEARS BEFORE WHILE THEY WERE STILL MAN AND WIFE." Because to so hold the court must indulge in a legal fiction that cannot be used here—that the insured *will be presumed* to have still wanted his ex-wife, instead of his children, to have his insurance proceeds.

AN EX-WIFE IS NOT ENTITLED TO THE PROCEEDS OF AN INSURANCE POLICY UPON THE LIFE OF HER LATE EX-HUSBAND WHERE: A HUSBAND TAKES OUT INSURANCE IN THE WINTER OF 1948 AND 1949 AND MAKES HIS THEN WIFE BENEFICIARY THEREOF, AND IN THE FALL OF 1952 THEREAFTER HE IS ADJUDGED MENTALLY INCOMPETENT BY A PROPER COURT AND IT AFFIRMATIVELY APPEARS FROM THEN ON THAT HE IS INCOMPETENT THE REST OF HIS LIFE, THAT HIS WIFE OBTAINED A NEVADA DIVORCE FROM HIM ON THE GROUND OF INSANITY AND THAT THE NEVADA COURT HELD THAT HE WAS INSANE, AND THAT DURING THE INTERIM PERIOD, HIS WIFE BY DEVIOUS AND FRAUDULENT MEANS DIVESTED AN UNFORTUNATE, MENTALLY ILL INSURED OF ALL OF HIS PROPERTY OF EVERY KIND, WHICH WAS RESTORED TO HIM BY JUDICIAL ACTION IN THE STATE COURT BY JUDICIAL ACTION INSTITUTED BY HIS GUARDIAN, THAT AFTER HIS DEATH THE EX-WIFE PRODUCED A WILL, TOTALLY DISREGARDING HIS CHILDREN AND LEAVING EVERYTHING TO HIS WIFE, AND WHICH WILL WAS DATED IN 1952 AND WHICH WAS REVOKED

BY THE PROBATE COURT ON THE BASIS OF COMPETENT PSYCHIATRIC EVIDENCE OF PSYCHIATRISTS WHO HAD TREATED THE DECEASED THAT HE WAS MENTALLY INCAPABLE OF HAVING TESTAMENTARY CAPACITY IN 1952; *THE COURT CANNOT ASSUME THAT SUBSEQUENT TO THE DIVORCE IT WAS THE INTENTION OF THE INSURED FOR HIS EX-WIFE UNDER THESE CIRCUMSTANCES TO STILL RECEIVE HIS INSURANCE AND DEPRIVE THE CHILDREN THEREOF* FOR TWO REASONS, (1) THE FACTS ALLEGED SHOW THAT THERE WAS EXTREME BITTERNESS BETWEEN THE PARTIES DURING THIS TIME AMOUNTING TO MURDEROUS INTENT ON BOTH SIDES, AND (2) INSURED WAS MENTALLY INCAPABLE OF FORMING SUCH AN INTENTION.

In this case, the petitioners, who are the children of the deceased insured, seek to collect from the respondent insurance company upon policies of insurance upon the life of their deceased father, which were payable to "The Insured's wife, Louella H. Stevens, if living" etc. (R. 98-114). Louella H. Stevens divorced the insured prior to his death (R. 42). Also prior to his death and for several years prior thereto, the insured and his wife had been engaged in a continuous and constant litigation whereby he sought, successfully, through his guardian, to retrieve properties which his wife had fraudulently divested him of while he was in a continuous state of not being mentally capable or mentally responsible for his acts (R. 36). After his death, a will made in her favor was revoked by the Court after hearing on the ground that the Insured, who was also testator, was not mentally capable of making a will (R. 48). The date of the execution of the purported will was within a few days of his purported application for change of beneficiary, whereby the insurance was pay-

able to "The Insured's wife", etc., as aforesaid. (R. 46, R. 72).

In the matter of a divorced wife attempting to collect insurance proceeds on a policy issued upon the life of her deceased husband prior to their divorce, there are five situations. These come under the so-called "Contract Theory."

1. Where a wife insures the life of her husband, pays the premiums, and subsequently a decree of divorce is entered.

In this situation the Courts have uniformly held that the wife has an insurable interest in the life of her husband and when she takes out an insurance policy on him and pays the premiums, she not only has a present property right in the policy but she also has a right to collect the proceeds upon his death even though they are divorced at that time. This reasoning is based on the fact that she has paid the premiums on the policy and at its inception it was not a "wagering scheme" that would take it out of the insurable interest doctrine. The leading cases on this are: *McKee* v. *Phoenix Ins. Co.*, (1859) 28 Mo. 383, 75 Am. Dec. 129, and *Ficke* v. *Prudential*, 202 S.W.2d 429, 175 A.L.R. 1215. This factual situation does not exist in the instant cause.

2. Where a man takes out a policy of insurance on his life, making his wife the beneficiary and then assigns the policy to her and subsequently a divorce is entered prior to his death.

The Courts have held that where a husband assigned a contract of insurance to his wife, she thereby becomes the owner of the property rights therein, that entitled her to collect the proceeds at his death even though they are then

divorced, particularly if she has paid the premiums thereon. The leading cases on this are: *Humphrey* v. *Mutual Life Ins. Co.*, (1915) 86 Wash. 672, 151 Pac. 100; and *Jacoby* v. *Jacoby*, 69 S.D. 432, 11 N.W.2d 135.

The cases dealing with this arise in situations where the insurance policy was assigned to the wife as a part of the divorce property settlement. See also: *Phoenix Mut. L. Ins. Co.* v. *Birkelund*, 24 Cal. 2d 352, 175 P.2d 5. This factual situation does not exist in the instant case.

3. Where the divorced wife was receiving alimony payments from her husband before his death by reason of provisions of final decree of divorce.

The Courts have held that where a divorced wife was receiving alimony payments from her husband by reason of the provisions of the divorce decree, upon his death she was entitled to collect the proceeds of an insurance policy payable to her as his wife, issued prior to the divorce. They base this on the proposition that the right to alimony payments gave her an insurable interest in the life of her husband after the divorce. A leading case on this is *Begley* v. *Miller*, 137 Ill. App. 278, as quoted in 52 A.L.R. 384. This situation does not exist in the instant case.

4. Where a man buys a policy of insurance on his life and makes his wife the beneficiary of the same and she divorces him before he dies and no change has been made in the designation of the beneficiary.

In this situation, the majority rule is that the wife is entitled to the proceeds of the policy.

The first leading case on this situation is *Connecticut Mutual Life Insurance Company* v. *Schaefer*, decided in 1877, and reported in 94 U.S. 457, 24 L. Ed. 451. See also Annotation, Sec. 3, General Rule, 175 A.L.R. 1224.

In deciding this line of cases, the Courts were faced with the necessity of maintaining that the divorced wife still had an insurable interest in the life of her former husband. They met this by basing their decisions on the *assumption* that the former husband still wanted his ex-wife to have the proceeds of his insurance; otherwise, he would have had the beneficiary changed after the divorce.

There is a minority rule on this situation in the United States. *New England Mut. L. Co.* v. *Spence*, C.C.A., 104 F.2d 665, 125 A.L.R. 128. In the State of Texas, the common law is that a divorced wife is prohibited from collecting the proceeds of any policy of life insurance in which she is designated beneficiary prior to the divorce. In the State of Kentucky, the same rule applies, the Court holding uniformly that the divorced wife cannot claim the insurance proceeds on the theory that the husband was entitled to the rights under the insurance policy automatically upon divorce. *Sea* v. *Conrad*, 155 Ky. 51, 47 L.R.A. (N.S.) 1074, 155 S.W. 622. In Kentucky, a statute is involved. The law of England provides that the divorced wife cannot collect insurance proceeds. *Gulbenkian* v. *Gulbenkian*, L.R. (1927) Prob. (Eng.) 237. The law is to the same effect in Canada. *Hart* v. *Tudor*, (1892) Rep. Jud. Quebec, 2 C.S. 534.

5. Where a man makes his wife beneficiary of insurance and thereafter becomes mentally disabled for the rest of his life, and during such period of disability his wife fraudulently divests him of all of his property, both real and personal, and there is extensive litigation by the guardian of such incompetent husband, in which his property is successfully retrieved from his wife and she then divorces him upon the ground of insanity, and there is extreme bitterness between the husband and wife, amount-

ing to murderous intent, and he then dies and the probate of his will leaving everything to her is revoked at the trial before the probate court for the reason that the decedent testator (insured) did not possess mental capacity to make a will, and the said purported will having been executed a few days from the purported execution of designation of beneficiary.

In this situation there is not a case that we have been able to find in the English language presenting the law thereon. Therefore, the Court must manufacture some law regardless of which way it rules.

However, by analogy, we feel that there can be absolutely no escape from the fact that the children of the deceased insured are entitled to the proceeds of his life insurance for the following reasons:

A. This Court should not indulge in the legal fiction as in situation No. 4, that the insured intended for his ex-wife to have the insurance proceeds because he did not change the beneficiary after the divorce. In this case, the insured was mentally incapable of forming such an intention. Also it cannot be presumed that he wanted his ex-wife to have the insurance proceeds because of some residue of affection for her. In this case there was the greatest bitterness between the parties, amounting at times to murderous intent.

B. There is no legal obligation to the ex-wife because the divorce decree did not provide for alimony or any kind of property settlement.

C. That there was every moral obligation on the part of the deceased insured towards his children who are the petitioners herein, as well as the legal obligation to them because at the time of his death all of said children

share in the estate, and under the will none of them would have shared in it.

The situation is simply this: The divorced wife was not entitled to the insurance proceeds, *because the change of beneficiary was executed when the insured was not mentally competent.* Then she could not take under the original designation of beneficiary because she treated him so abominably, stole his property, and kicked out and divorced him, and *the Court cannot assume the insured wanted her to have the proceeds of his insurance after the divorce, because of such treatment and his mental inability to form such an intention.*

Therefore, if the respondent was not legally obligated to pay the ex-wife under the change of beneficiary, and was also not obligated to pay her under the original designation —then it must pay to the petitioner children under the Florida Statute above quoted.

IMPORTANCE OF GRANTING THIS WRIT OF CERTIORARI.

It is felt that the situation involved here comes up more frequently than our law reports would indicate. That is to say that there are more mental cases whose insurance proceeds go to their ex-wives, by operation of law (under a wrongful indulgence in a legal fiction) rather than to their children, than would appear on first blush. Since this question has never been exactly settled by any case we have found reported in the English language, it is felt that it is important enough for this Court to establish the law once and for all. The equitable considerations are as strong as ever appeared in a case of personal relations between the father and children and father and ex-wife.

Therefore, we sincerely feel that since the Court must make a novel decision that it should sustain the petitioners' cause of action, first, because of legal reasons, and secondly, because of the very high equitable reasons—the obligations of the father to his children rather than to the divorced wife who had been judicially established as a fraud and a trustee *ex maleficio*.

Respectfully submitted,

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